continued from our issue of the 13th.]

The repeal of that article could not divest that right, though no doubt at divest the member of the tendence of abandonment. That rule was probably inoperative from the beginning as being in conflict with the general law of the land. But its repeal before it could have had any operation, in any event, does away with the necessity of determining what effect it might have had. Suppose, however, none of the Fanaca locators and every done any work on their claims after they were recorded, their right to the ground could not have been forfeited prior to April 18, 1865, and by the amendments to the mining laws of July 15, 1864, in became impossible for their claims ever to be forfeited until the miners of the district, or the Legislature of the State, or Congress, chose to revive that penalty. This was never done till after the active resumption of work by the successors of the Panaca locators. Upon these various that the right to these locations was never forfeited. It was contended in the argument that these contracts the penalty of the p Continued from our issue of the 13th 1 will amend it. There is no doubt that, until the passage by Congress of the mining law of May, 1872, the miners had, and always exercised, the right of prescribing the conditions of forfeiture of mining claims. No doubt they often abused that right, and that was probably the reason why Congress at last interfered. While, however, they had the right to prescribe the conditions of forfeiture, they could certainly provide that there should be no forfeiture in any event.

Were their claims abandoned.

The result of the authorities cited upon this point seems to be non user or failure to occupy a mining claim during the period which, under the statute of limitations, would bar any action for its recovery, raises a presumption of abandonment, but not a conclusive presumption. It may be rebutted by proof of circumstances which show that there was no intention to abandon. The law of Congress of May 5, 1866, Ch. 42; Sec. 2, does not change this rule in its application to this case. Its only effect was to preserve the mining claims inclinded in the territory transfered from Utah to Nevada, in statu quo, unaffected by the change of parisdiction, to make them as good in Nevada as they were in Utah. It left them, as all property every where is, subject to be abandoned, and it left the rule for determining the fact of abandonnent unchanged. Applying that rule to this case, it is shown that all of the Panaca locators falled to occupy or work their claims during a Were their claims abandoned. My conclusion is that these three par-ties did not abandon their claims, but that all the others did.

The plaintiff as successor in interest to

The plaintiff as successor in interest to Hamblin, Pulsifier. Sherwood and Vandermark has a perfect right to as much of the Raymond & Ely vein as was embraced in their original locations—a right which dates back to March 17, 1864.

But those locations embraced but three hundred and fifty out of the thousand feet in controversey, and do not include any portion of the ground from which the plaintiff was onsted by the defendant. This renders it necessary to determine the next questions. Was the Kentucky location valid, and if so, were the rights originally acquired under it preserved?

If the location was valid there is no doubt that the right acquired by means of it were preserved by a full compliance with every requirement of the mining law. But two objections are urged against the validity of the lacation.

First. That the notice was void for uncertainty became it did.

against the validity of the lacation.

First. That the notice was void for uncertainty, because it did not in any way designate what particular thousand feet of the ledge was claimed.

Second. That the claim was void on account of the fraud attempted by the locators in claiming two hundred feet for discovery, on a vein which they knew to have been previously discovered and located by others; under whose license they were mining upon it at the very time of their locations.

discovery, on a vein which they knew to have been previously discovered and located by others; under whose license they were mining upon it at the very time of their locations.

As to the first objection, I do not think that the intention of the locators, Lee and Baker, that the monument should mark the center of the claim, cures the defect of the notice. If their secret intention could control the location, no one could ever have been safe in going within a thousand feet of them one either side, for another trial, in a controversey between other parties, McCall might say that it was his intention that the claim should extend a thousand feet to the east of the monument; or Ayrs might say that it was his intention was that it should run wholly to the west. Of course I wish it to be understood, that I say this only by way of illustration of the endless uncertainty and confusion that would result from a rule allowing locators of mining ground to establish their boundaries by means of their unpublished intentions, and not for the purpose of intimating that McCall or Ayr would swear to anything but the truth. The very essence of a mining location is the manifest intention to appropriate a cirtain specific portion of the mineral lands not in excess of the amount allowed to the locator. All of the objects of requiring any sort of licestics. 

## PIOCHE DAILY RECORD.

VOL. VII.

PIOCHE, NEVADA, SUNDAY, DECEMBER 14, 1873.

held to extend the claim equal distances each way from the location monument. The case is not quite parallel to those cases decided in the State of Kestucky.

The case is not quite parallel to those cases decided in the State of Keatucky, which are cited in support of this view; but, conceding that it falls within the principle established by these decisions, and that there is no objection to the validity of the location on the ground of uncertainty, the second objection appears to me to be fully sustained.

The Act of Congress of July 26, 1866, was in force at the date of the Kentucky location. It provides (sec. 4) "that no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode."

Now, on the assumption that the Kentucky and the Pansea are on the same vein, it is clear that Lee was not the first

feet extending equal distances each way from the monument.

This might have been so if they had been acting in good faith, really believing that they were the discoverers of the vein. But they were acting in bad faith and their fraudulent intent tainted the whole itransaction. They cannot now be permitted to reap all the advantage they would have gained by acting honestly. Attempting to compass by fraud more than they were entitled to they incur the penalty of losing what they might have had.

The Kentucky location then being void

The Kentucky location then being void the ground was free to be appropriated by the locators of the Lightner claim, ex-cept that part of it covered by the Ham-blin and Pulsifer claims.

WAS THE LIGHTNER LOCATION VALID? The objection to it is that it was not made in good faith by the locators for themselves, but was made for the benefit of the corporation, plaintiff.

There is no doubt about the fact. The location was made for the benefit of the corporation. But does that invalidate it?

that all of the Panaca locators failed to occupy or work their claims during a larger period than that prescribed by our satute of limitations (two years) prior to the Keatucky location. The presumption is that they all were abandoned, and there is no evidence sufficient to rebut this presumption except in the cases of Hamblin. Sherwood and Vandermark. My conclusion is that these three par-

action; in its form it was without a flaw.

The locators took no more than they had a right to take, and neither the defendant nor the public is concerned to inquire upon what considerations they conveyed it to the plaintiff.

I conclude therefore that the right of the plaintiff was complete, at the date of the commencement of this action, to all that part of the Raymond & Ely vein covered by the Lightner location, and also to those portions embraced in the old Panaca locations of Hamblin, Pulsi-

old Panaca locations of Hamblin, Pulsifer, Sherwood and Vandermark; that is
to say, to all the ground sued for, and
all the ground claimed by the defendant
in its answer, except about one hundred
and thirty feet on the west end of the
Kentucky claim.

The plaintiff is therefore entitled to
have judgment of restitution of the
ground described in the complaint, with
\$500.00 damages on account of ore extracted and removed by the defendant,
and for its costs of suit. Also to a decree
perpetually enjoining the defendant, as perpetually enjoining the defendant, as prayed for. It is ordered that judgment, and decree

be entered accordingly.
W. H. BEATTY, District Judge. Hamilton, Dec. 1, 1873.

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